

# What We May Find Out About Law Students from Giving Them Clinical Training That We Do Not Find Out When We Give Them Casebook Training

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## *Introduction.*

Clinical training in law schools, as contrasted with the case method, is still in the experimental stage. Theories with regard to it are still close to the ground. Enough headway has been made, however, to enable those in the thick of things to make some tentative statements which may serve as a basis for discussion.

Perhaps the most important of these is that the clinic course is far more than a practice course. While it does give much specific information, its value is greater in the direction of supplying points of view toward law practice. These points of view include a sense of ethical values, recognition of the time and form elements, a feeling of confidence in the presence of the unexpected. One of its main products is the information made available as to the skill and character of the student. Such information is not discoverable in the classroom through the case method. The practicing lawyer in search of an assistant, the corporation inquiring for a young practitioner to take a place in its legal department, the prospective employer want just this information. It is reasonable to assume that in the course of time admissions committees of bar associations will seek such practical data from law schools.

## *The Instructor's Viewpoint Toward Clinic Grading.*

The viewpoint of the clinic instructor differs from that of the ordinary classroom instructor. In the clinic, the atmosphere of a law office is maintained. Students are expected to show a maturity of viewpoint. They should act as if they were clerks on probation in an active law office. A lawyer-employee relationship is not the same as a student-instructor relationship. If the student, by the end of the year, has made a place for himself in a busy office, he passes the course. In a second respect the clinic instructor-student relationship is unique. The instructors endeavor to view the student as a client would view him. Any client may bring a first case to a lawyer. If he decides to bring a second case, it means that the lawyer has passed a very real test. The realistic approach of such grading, from the lay as well as the professional viewpoints, is obvious.

The evaluation is done not by the director alone, but by the staff of the legal aid clinic. The final grade of the student, therefore, represents a composite evaluation, lay and professional. A lawyer in private practice might well secure a similar opinion from the members of his office force as to the effectiveness of a young assistant.

The Duke Legal Aid Clinic staff consists of a director, four attorneys, and two secretaries. Each one of the four attorneys is assigned to a particular field of work—one to briefing; one in civil trial work; one to criminal trial work; and one to fact gathering and organization of material. One of the secretaries is in charge of the office routine and the other in charge of student dictation. Staff meetings are held every two weeks throughout the year, and in the course of discussion each student and his work comes up again and again for consideration. Through this machinery, new and very personal information is made available.

#### *What Do Instructors Learn about Law Students?*

In the classroom, with the instructor on one side of the desk and the class on the other, and in personal contacts around the law school building, and at the homes of the faculty members and elsewhere, the instructor secures certain general impressions. Specifically he learns a great deal about the analytical ability of the student in dealing with hypothetical cases; that the student has never been caught cheating, stealing, or committing criminal offenses. But by and large this information is limited, negative, and indefinite. It is not enough in law practice to be able to say that such a man led his class; that we know nothing against him; that he has the makings of a good legal scholar. The problems which fall to the lot of the practicing lawyer are different and require a different sort of person for their adequate solution. What we want to know is, How will a man react to the problems of law practice? The only way to learn is to confront him with the conditions of practice and observe him.

The clinic instruction does just this. It places the student on the firing line, gives him a degree of freedom in making decisions, and then proceeds to test him out in respect to various skills which are necessary to the practicing lawyer.

In the clinic the student and the instructor are both on the same side of the desk and the client is on the other side. The consequences of a wrong decision or false step will come home directly to the individual, and perhaps indirectly by lowering the prestige of the clinic. Under such pressure it is not enough for a student to draft a contract which is 60 per cent. perfect, to prepare a brief that will be graded "C," or to do work which merely passes. The client is entitled to first-class work all the time. Every one, staff and students alike, is held to a high standard of performance.

#### *The Clinic Grading System.*

At Duke University the clinic staff has three stages of grading during the year. If the student does average work, he receives a "3"; if better than average work, a "4" or even a "5." Poorer work receives a "2" or a "1." When each case is closed, it is brought up for consideration at the next staff meeting.

At this stage four characteristics are in question—adaptability, dependability, attention to detail, and organization of material.

In grading on adaptability to office routine, the question is whether the student is able to fit himself into the system of an active law office. While the grade is, perhaps, the result of a general impression, there are numerous illustrations where students have failed to adjust and these failures constitute the interesting material that calls for much further study. The students who waste their time, who are constantly irritated over the need for doing things at a certain time, who have no ability to adjust their minds to unexpected legal problems that they have never come across in class before, are danger signals for the instructor.

In grading the students on dependability, the question is whether the student can be handed a piece of work to do and then left to his own devices, or whether he has to be taken by the hand

and led through each step of each case. For example, a student who has a piece of work to do before vacation time and who leaves the work unfinished for the members of the staff to complete; the student who sees no use in writing a follow-up letter when the first one has been unanswered; the student who allows the hearing day to go by without making any preparation for the hearing—is not dependable. Such men are danger signals for the instructor.

In grading on the extent to which the student gives attention to detail, the best device is the docket card. At the Duke Legal Aid Clinic information regarding each case is kept on a 5" x 8" docket card. The recording procedure is analogous to that which goes to make up the chart kept at the foot of the patient's bed. The following two examples indicate a student who has handled his work poorly and another student who had handled his case well:

Example of work done poorly:

**DOCKET CARD**

Name of Applicant D. N. (colored woman)

Telephone \_\_\_\_\_

Residence \_\_\_\_\_

**DATA AS TO CLIENT**

Bank Account	None	Salary	
Real Estate		Rent Paid	\$1.50 wk.
clear value	None		
Personal Property	None	No. of Dependents	5
Income from		Alien	
other sources	None		
Employed by	F. E. R. A.	First Papers	
Nationality	United States	Second Papers	
Referred by	F. E. R. A. office		
Nature of Case	Real Estate		
Court	Term	No.	

I hereby affirm that I am not financially able to pay an attorney for legal services.  
(Signed) D. N.

**DOCKET**

July 22, 1935

**CASE NO.....**

Name of Adverse Party \_\_\_\_\_

Telephone \_\_\_\_\_

Residence \_\_\_\_\_

**DATA AS TO DISPOSITION OF CASE**

Client, in 1930, owned a piece of land in the town of D and mortgaged it to the Trust Company for \$2,800. Client could not meet the payments and the land was sold three years ago. She wanted to know if she could get a federal loan on the land. She was advised that she could not.

We also advised her that, in her marital difficulties, she could get a divorce from her husband who left her four years ago, but that before we would start the proceedings it would be necessary for her to get a letter from the superintendent of public welfare saying that such is desirable.

Case closed.

Example of work well done:

**DOCKET CARD**

Name of Applicant M. J. (colored woman)

Telephone \_\_\_\_\_

Residence \_\_\_\_\_

**DATA AS TO CLIENT**

Bank Account	None	Salary	\$5.00 wk.
Real Estate		Rent Paid	\$1.00 wk.
clear value	None		
Personal Property	None	No. of Dependents	None
Income from		Alien	
other sources	None		
Employed		First Papers	
Nationality	United States	Second Papers	
Referred by	Another client		
Nature of Case	Divorce		
Court	Term	No.	

I hereby affirm that I am not financially able to pay an attorney for legal services.  
(Signed) M. J.

**DOCKET**

July 20, 1935

**CASE NO.....**

Name of Adverse Party C. J.

Telephone \_\_\_\_\_

Residence \_\_\_\_\_

**DATA AS TO DISPOSITION OF CASE**

Client requests our assistance in obtaining a divorce from her husband, C. J. They were married in the town of L., North Carolina, June 26, 1930. They separated in the town of D. in August, 1931, and have lived separate and apart since.

There are no children born to this marriage. C. J. is now living in the town of C., North Carolina.

Client was advised that we do not take divorce cases without recommendation of a social agency. She is to return to the office Thursday, August 1. In the meantime a letter will be written to the superintendent of public welfare requesting that an investigation be made.

7/20/35—Letter to superintendent of welfare requesting investigation.

7/20/35—Letter received from superintendent of welfare stating that M. J. was not able to pay a fee, and recommending that we take the case.

7/29/35—Complaint and affidavit prepared.

8/7/35—M. J. has not called at the office. Letter forwarded to her requesting that she come in.

8/9/35—Letter sent to M. J.'s home address has been returned. The same letter will be sent to her place of employment.

9/4/35—Letter to client requesting that she come to the office to sign the papers, also to bring \$7.50 for filing fees.

9/23/35—Again wrote M. J., sending the letter this time in care of Mrs. S., her employer. Requested that answer be made within ten days, or have the case filed only to be reopened when she complies with the \$7.50 deposit requested.

9/25/35—Paid a call to the welfare office of town of D. to see the superintendent on Mr. Bradway's advice. The superintendent was not in, but I left the information with his secretary, the substance of which was that he should make an effort to collect the \$7.50 costs incident to the handling of this matter before we could proceed. He will call when he has any developments.

10/4/35—Called again on the superintendent of welfare at the welfare office. He had no information from M. J. and her intention to pay \$7.50 costs. Accordingly, I called her on the phone and received a promise from her to bring the money to the clinic office next Thursday.

10/10/35—M. J. came by this afternoon, but did not have time to wait. She wanted to know how long after she paid the \$7.50 it would be before she could obtain her divorce, and how much more money she would have to pay later. She is coming back next Thursday with the \$7.50, she says. (E. M. W.—Sec.)

10/18/35—According to the note above, M. J. was to call at the office yesterday, but failed to do so. Thursday is her only day off duty, so we will see whether she will put in an appearance next week.

11/1/35—This client has not put in an appearance at the office for several weeks. In view of the little co-operation this woman has given us to the end that we might do something for her, we feel that this case

should be closed at this time, subject to being opened at any time by her. R. L. H.

In similar fashion, students are required to organize the facts of cases that are being prepared for trial. The relatively poor reports are danger signals for the instructor.

In grading the students on the organization of material, reference is had to the matter of briefing. At the Duke Legal Aid Clinic three sorts of briefing are required: Appellate briefs, trial briefs, and briefs of fact for presentation to a Legislature. The relative character of the reports is easily observable, and students who do poor work are danger signals to the instructor.

It is not sufficient, however, merely to grade the student on the work at the conclusion of each case. Contact between student and instructor grows in intimacy during the year, and it is essential that there should be some comparative record of the periodical impressions. To this end the students are graded at the conclusion of each month on their ability to deal with and work with people.

In considering the ability of the student to work with people, the staff is concerned with the extent to which the student fits into a harmonious office relationship. Even an able lawyer may be so disagreeable in his office contacts as to deserve and achieve ostracism. The student in the clinic office who is continually discourteous to the members of the staff, who insists upon interviewing clients with his feet on the desk, and in other ways demonstrates an attitude which would not be tolerated in an efficient law office, becomes a danger signal to the staff.

Similarly, in grading the students on ability to deal with lawyers, court clerks, clients, opposing parties, witnesses, and others, there are many opportunities for decision. The student who interviews the client in such a way as to make the client weep, who conducts a phone conversation in such a manner as to drive the client away permanently, who refuses to take a case because there are

women involved and he does not want to practice law in cases where women are involved, the student who insists upon phoning to lawyers, in no way concerned with the case, to have them tell the client that the student is right in his interpretation of the law, are danger signals to the instructional staff.

Realizing that the monthly testing does not allow for the maturity of viewpoint of a longer period, the third grading process at Duke consists in a semiannual evaluation of certain mental processes which seem to be more characteristic of the practicing lawyer than of either the judge or the legal scholar.

In grading a student on his creative ability, attention is given to the extent to which he initiates ideas, proposes that certain steps be taken instead of waiting until somebody asks him why he does not take them. The lawyer who feels an obligation to keep the case moving may be a better practicing lawyer than his neighbor whose abilities are solely analytical.

A student who does not have creative ability may be particularly good in some particular field, such as briefing, but his services are essentially limited. Some one should know about it before he gets himself or his client into difficulties.

In grading ability to plan a legal campaign, the questions are: Has the student thought the problem through; and how reasonable is the solution which he proposes? He should have legal imagination and the ability to see, even though only dimly, a practicable goal. If he cannot demonstrate average ability, somebody, in advance of his admission to the bar, should know his limitations.

In grading on legal judgment, the problem is as to the ability to decide and the quality of the decisions he makes. One of the most interesting of the clinic experiences from the instructor's viewpoint is to see some of the better men in the class gather increasing ability to make decisions. At first they all want to discuss and analyze. They must be driven to decide issues involving re-

sponsibility. Some never do acquire the ability. If the plans are wise from the client's standpoint and the public interest, if they are legally possible, if they are free from unethical considerations, and if they are of practical value, the student is a valuable addition to the ranks of the lawyers. On the other hand, if the student is scatter-brained rather than steady, conspicuous for temporary flare-ups of brilliance alongside of serious errors of judgment, the facts are danger signals to the staff.

In grading as to sense of ethical considerations, comparatively few illustrations have as yet been noted. Obviously, such matters are not for general publication. The fact, however, that some students have shown a complete disregard of the ethical considerations in a case is a matter of concern to the instructional staff.

Probably the most interesting aspect of the clinic work is the ability of the student to meet the unexpected. If he can interview a client who has a case in some field of law in which the student has never taken a course and show dignity, judgment, insight in handling the problem, he deserves commendation. If he flounders hopelessly under such circumstances, somebody ought to know about it and report upon that fact, because obviously such a student is not yet sufficiently seasoned to assume responsibilities of law practice.

#### *The Final Examination.*

At the end of the year an examination is given. The nature of this examination has been modified substantially over a period of years. At first it was thought that details of practice in the local jurisdiction would suffice. When the course was developed beyond the point of a practice course, the first experiment for an examination question was an analytical essay or a set of informational questions about legal aid and legal aid clinic work. At the present time at Duke University each student is given a half hour's interview with the

instructional staff. The setting is an office interview with a client. The student is expected to assemble the facts and plan a campaign. A typed set of facts in narrative form, as if from the lips of the client, is given to the student. The facts are incomplete, and it is necessary for him as a first step to surmise their incompleteness and call for additional information. Such additional information is contained on separate sheets and is given to the student only when he asks for it. A carefully prepared set of facts will contain all sorts of legal and ethical problems. The student is not expected to know the answers to all these problems, but he is expected to be able to decide where to go and how to get there. After he has secured the facts, it is necessary for him to devise and state a plan of campaign and then defend it against questions by the instructional staff. This device indicates something as to the mental processes of the lawyer which it is the task of the clinic instruction to develop and measure. A legal aid clinic, such as the one at the University of Southern California, in a large city, provides the opportunities for adding an interview with a real client as part of the examination.

#### *Conclusion.*

From the foregoing statements certain conclusions emerge:

1. The ideal clinic student appears not as a brilliant analyst, but as a steady person, able to adapt himself to office routine, dependable, able to handle detailed work effectively, able to take the client's story and other unorganized facts and arrange them in shape for legal use, able to work with people in the office and to deal with the public, able to do his share of creative, as well as analytical, work in the law, able to plan reasonably effective campaigns in cases, able to exercise a mature and quasi judicial judgment with a keen sense of the ethical considerations implicit in the most in-

nocent looking problem, and self-reliant in the face of the unexpected.

2. The average members of the class give promise of being ordinary routine lawyers with always the possibility of awakening to a greater degree of initiative and ability.

3. The most interesting group, however, from the grading standpoint, are the less effective students whose work in one or more particulars stands out as crude, unlawyerlike, ineffective, or generally unsatisfactory. If the clinic grading system had behind it a few more years, it would be possible to say with considerable assurance that the students in this latter group are not yet qualified to become lawyers either as assistants in law offices or as independent practitioners. The student who lacks in marked degree any one of the characteristics mentioned above in the catalog of the ideal clinic student will find it necessary to make brave readjustments if he expects to contribute his part to building up the prestige of the legal profession. Since the clinic instruction brings this type of ineffectiveness to the surface and supports it with a definite written record, it would seem as though there was every reason to emphasize the tuning up of devices for clinical instruction.

4. The material secured from clinical instruction is so extensive and detailed, represents so many points of view, lay and professional, and is procured under conditions so closely approximating regular practice, that it would seem to be invaluable to admissions committees of bar associations, to prospective employers, lay and professional.

The students who are not qualified to do clinic work heretofore have been able to hide their inefficiency because they were never tested on matters beyond the classroom. The law school diploma, in the past, has represented certain limited faculty conclusions, based on certain limited contacts. The clinic work makes possible not only a broadening of the

conclusions but a permanent record of the contacts out of which the conclusions grow.

It is no great assumption that a man who does poor work in the clinic will do poor work at the bar. As the clinic grading system is improved from time to time, its conclusions as to specific students will become more accurate. It is not at all unlikely that in due course the

clinic staff will feel itself charged with the responsibility of recording that certain students are not yet qualified to become members of the bar, irrespective of the work they may have done in their other courses. The usefulness to law school, admissions committee, court, and general public of such advance information regarding a lawyer cannot be ignored.

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## Legal Aid Clinic versus Legal Aid Society

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Any discussion of the comparative effectiveness of Legal Aid Societies and Legal Aid Clinics, from the standpoint of legal education, should properly start with an attempt to differentiate the two types of organizations. The line of demarcation cannot be drawn with categorical exactness. Functionally, the distinction is one of emphasis upon objectives. It may be assumed for present purposes that the principal aim of the Legal Aid Society is to render adequate public service in the form of legal advice and assistance to the poor. Its primary concern is with its clients. Any provision whereby law students are permitted to participate either as spectators or as adventitious assistants must be secondary and subordinate, with a minimum of interference in the administrative efficiency of the office. The Legal Aid Clinic, on the other hand, professes a twofold objective. It exists to serve both the student and the client, and, theoretically, the emphasis should be about equally divided.

Practically, the distinction, if any exists, is largely one of physical arrangement. The Legal Aid Society is an independent and completely equipped law office, with a staff sufficient to handle all the work, whether students are available or not. Geographically it is located fairly near the center of a metropolitan area and possibly at some distance from the law school. By arrangement between the school and the society, a group of students, usually limited in number, attend at the office, a few of them at a time, to assist in the work under supervision of the regular staff. Their general instruction and advisory guidance are intrusted to a member of the law school faculty who may or may not be a member of the society's legal staff.

The Legal Aid Clinic, on the other hand, is usually located in the law school building and is operated, in some respects, as an integral part of the law school itself.<sup>1</sup> The size of the staff and

<sup>1</sup> The Southern California Legal Aid Clinic, it should be noted, is not directly an integral part